

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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**Ex parte** Jon A. Arrowood and Michael S. Miller

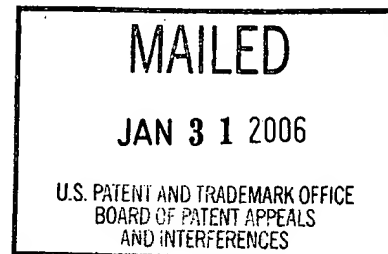
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Appeal No. 2005-1879  
Application No. 09/731,084

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**ON BRIEF**

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Before HAIRSTON, DIXON, and BLANKENSHIP, **Administrative Patent Judges**.  
DIXON, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 3-6, which are all of the claims pending in this application. Claims 1 and 2 have been canceled.

We REVERSE.

## BACKGROUND

Appellants' invention relates to noise suppression in a beam-steered microphone array. A copy of the claim 5 under appeal is set forth below.

5. A method, comprising the following steps:
- a) maintaining a self-service kiosk which dispenses articles, currency, or communication services;
  - b) maintaining a beam-steerable microphone array at the self-service kiosk;
  - c) measuring noise content and speech content of several lobes of the array;
  - d) selecting a lobe which carries
    - i) larger speech signals than other lobes and
    - ii) smaller noise signals than other lobes.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Slyh et al. (Slyh)	5,574,824	Nov. 12, 1996
Nagata et al. (Nagata)	6,009,396	Dec. 28, 1999
Martino et al. (Martino)	6,061,646	May 09, 2000

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the answer

(mailed Feb. 10, 2005) for the examiner's reasoning in support of the rejections, and to the brief (filed Jul. 14, 2005) for appellants' arguments thereagainst.

### **OPINION**

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Only those arguments actually made by appellants have been considered in this decision. Arguments that appellant could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)]. We note that appellants have elected to group claims 3-6 together, but set forth two separate groupings in the responsive arguments. We will address these arguments in the order presented in the Brief. As noted above, we will group claims 4 and 6 with their corresponding independent claims and note that appellants' arguments parallel each other.

**35 U.S.C. § 103**

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on section 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the

claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, “the [E]xaminer can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.’” **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” **Dembiczak**, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations as recited in independent claims 3 and 5. We find that independent claims 3 and 5 set forth a “beam-steerable microphone array at the self-service kiosk; measuring

noise content and speech content of several lobes of the array; selecting a lobe.”

Appellants maintain that the individual references and combination does not teach or suggest the claimed invention. (Brief at pages 6-8.) We agree with appellants and find that the examiner has not established sufficient evidence to support the examiner’s conclusion of obviousness of the claimed invention.

Appellants argue that the examiner’s assertion regarding a “desire to put the prior signal processing to use in a meaningful way does not make actuating a lobe having both a relatively high speech content and a relatively low noise content obvious.” (Brief at page 7.) Appellants argue that “[p]rior signal processing is essentially captured data or information. Any time a person deliberately causes data or information to be captured that person intends to use that data or information in a meaningful way. This does not make all meaningful uses of that data or information obvious. . . While ‘actuating a lobe having both a relatively high speech content and relatively low noise content’ is one possibility among a plethora of meaningful uses that could be conceived, it does not logically follow that this one possibility is obvious.” (Brief at page 7.) We agree with appellants and find that the examiner has not supported the ultimate conclusion of obviousness upon any of the teachings applied against the instant claims. Therefore, we cannot sustain the rejection of claims 3 and 5 and their dependent claims 4 and 6.



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